

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA**

In re:

JULIET BRIGHT,

Debtor.

Case Number 03-23032-BKC-RBR
Chapter 7

**ORDER GRANTING DEBTOR'S MOTION TO REOPEN CASE AND REDEEM
COLLATERAL**

THIS MATTER came before the Court on the Motion By Debtor Juliet Bright To Reopen Case, And To Redeem Collateral Of Tropical Financial Credit Union Claimed As Exempt (C.P. 11). The Court having reviewed the files and being otherwise duly advised in the premises makes the following findings and conclusions.

BACKGROUND

The Debtor listed the 2000 Toyota Camry in the original petition with a value of \$6,490.00 (six thousand four hundred and ninety dollars) as of April 14, 2003. On Form 8, Individual Debtor's Statement of Intention, the Debtor stated that the debt will be reaffirmed pursuant to 11 U.S.C. §524(c). (emphasis added). Debtor did not check or mark the box for redemption pursuant to 11 U.S.C. §722. The Debtor did not claim the Toyota as exempt on Schedule C, Property Claimed as Exempt. However, the Trustee apparently abandoned any interest and filed her report of no distribution (C.P. 5). Accordingly, title to the Toyota remained in the Debtor. The Creditor did not seek stay relief nor did it seek to require the Debtor to reaffirm or redeem pursuant to 11 U.S.C. 521. *See Taylor v. AGE Federal Credit Union (In re Taylor)*, 3 F.3d 1512 (11th Cir. 1993) (holding that a Chapter 7 debtor may not retain collateral

without either redeeming the property or reaffirming the debt; the Court did not state what happened if the deadline passed and the debtor has done neither).

MEMORANDUM OF LAW

The Debtor seeks to reopen the case pursuant to 11 U.S.C. § 350(b). This section is construed broadly as the section indicates that the court may reopen the case for one of three different reasons: 1) to administer assets; 2) to accord relief to the debtor or 3) for other cause. Relief shall be liberally granted under this section. *In re Rettemnier*, 113 B.R. 757 (Bankr. S.D. Fla. 1990). It is routine for a bankruptcy court to reopen a case to “accord the debtor relief” if the debtor cannot receive the same relief elsewhere. *See generally In re Hunter*, 283 B.R. 353 (Bankr. M.D. Fla. 2002). Clearly, this is the only court that can grant the Debtor relief under 11 U.S.C. § 722 and, therefore, the Debtor is clearly within her right to have her bankruptcy case reopened because she cannot pursue this right elsewhere.

This court is concerned with the timing of this motion. Specifically, the court queries whether the court can grant the debtor the relief of redemption after the discharge has been entered and the case has been closed. This analysis must begin with the statute itself. 11 U.S.C. § 722 governs the Debtor’s right to redeem her automobile as follows:

An individual debtor may, whether or not the debtor has waived the right to redeem under this section, redeem tangible personal property intended primarily for personal, family, or household use, from a lien securing a dischargeable consumer debt, if such property is exempted under section 522 of this title or has been abandoned under section 554 of this title, by paying the holder of such lien the amount of the allowed secured claim of such holder that is secured by such lien.

The statute itself has no time deadline. The timing of such a motion is governed solely by a debtor’s obligations pursuant to 11 U.S.C. 521(2), which provides as follows:

[I]f an individual debtor's schedule of assets and liabilities includes consumer debts which are secured by property of the estate--

(A) within thirty days after the date of the filing of a petition under chapter 7 of this title or on or before the date of the meeting of creditors, whichever is earlier, or within such additional time as the court, for cause, within such period fixes, the debtor shall file with the clerk a statement of his intention with respect to the retention or surrender of such property and, if applicable, specifying that such property is claimed as exempt, that the debtor intends to redeem such property, or that the debtor intends to reaffirm debts secured by such property;

(B) within forty-five days after the filing of a notice of intent under this section, or within such additional time as the court, for cause, within such forty-five day period fixes, the debtor shall perform his intention with respect to such property, as specified by subparagraph (A) of this paragraph; and

(C) *nothing in subparagraphs (A) and (B) of this paragraph shall alter the debtor's or the trustee's rights with regard to such property under this title;*

(Emphasis supplied). The issue before this court in this case is not an issue of first impression.

Several other cases have dealt with it and have ruled that a Chapter 7 debtor does, as a matter of law, have the right to reopen a case and redeem personal property after the entry of a discharge.

Section 521(2)(B) seemingly places a restriction on a Chapter 7 debtor to perform her obligations with respect to a secured consumer debt within 45 days after filing her *Statement of Intentions*. But the very next subsection of the statute indicates that the time limit proscribed by section 521(2)(B) does not affect a Chapter 7 debtor's *substantive* rights to the collateral. Subsection (C) therefore has been repeatedly interpreted to mean that there is no time deadline on filing a motion to redeem under section 722.

The court in the case of *In re Rodgers*, 273 B.R. 186 (Bankr. C.D. Ill. 2002) wrestled with the timing of a motion to redeem and found that the Chapter 7 debtor was entitled to redeem collateral after the expiration of the 45-day time period in section 521(2)(B). The debtor, Rodgers, attempted to redeem his automobile more than 45 days after he filed his *Statement of Intentions*, which indicated that he would reaffirm (not redeem). The creditor, Ford Motor Credit Company, objected based on the deadline and the language of section 521(2)(B). The *Rodgers* court disagreed with the creditor by ruling as follows:

The statute itself does not specifically provide that a (2)(B) violation precludes redemption and, in fact, provides no express remedy. Subparagraph (C), however, does provide that nothing in subparagraphs (A) and (B), including the mandatory time for performance, shall alter the debtor's rights with regard to the secured property under the Bankruptcy Code. 11 U.S.C. § 521(2)(C). One of those rights is the right of redemption pursuant to Section 722. Accordingly, while the statute provides a time limit for performance in subsection (B), it preserves the right of redemption, even if tardily performed, through subsection (C).

Rodgers, 273 B.R. at 191. This view, holding that the expiration of the 45-day window of section 521(2)(B) cannot disavow a Chapter 7 debtor the right to redeem, has been reached by numerous courts. *Accord*, *In re Eagle*, 51 B.R. 959, 961-2 (Bankr. N.D. Ohio 1985); *In re Ard*, 280 B.R. 910, 913 (Bankr. S.D. Ala. 2002). The Debtor's motion to redeem in this case, therefore, while not before the end of the 45-day period indicated by section 521(2)(B), should be heard by the court and not summarily denied on the basis of timing.

The *Rodgers* view applies even if the case has been closed or the discharge has been entered. In *In re Chance*, 1994 WL 16005470 (Bankr. S.D. Ga. 1994), had facts before it that are similar to the instant case. The Chances owned a mobile home and filed a Chapter 7 bankruptcy. They were not current on the payments and the court entered a discharge for them in due course. The Chances' *Statement of Intentions* indicated reaffirmation but they did not execute that intention. The Chances filed a motion to redeem the mobile home after the entry of the discharge and the creditor objected to the timing of the motion. The *Chance* court overruled the creditors objection by finding that there is no time limit to seek redemption. *See also*, *In re Hawkins*, 136 B.R. 649 (Bankr. W.D. Va. 1991) (since the bankruptcy code is silent on timing of redemption, debtor can redeem at any time). These cases stand for the proposition that the Debtor in this case should be allowed to redeem even though she has received her discharge.

At least one court has held that a Chapter 7 debtor can redeem pursuant to section 722 after the case is closed by reopening the case for that sole purpose. The court in *In re Cassell*, 41

B.R. 737, 739-40 (Bankr. E.D. Va. 1984), ruled that the Chapter 7 debtor could reopen his case and exercise his right to redeem under 11 U.S.C. § 722. The *Cassell* case practically is on all fours with the case at bar because the debtor in *Cassell* indicated that he would reaffirm his automobile loan with the lender but failed to do so while the case was open. The debtor received his discharge and the case was closed. The lender repossessed the automobile and the court entertained a motion to reopen and redeem the automobile. The court found that there is no time limit on redemption and that section 350(b) allows a bankruptcy court to reopen a case and afford debtor relief, including the relief of redemption. *Cassell*, 41 B.R. at 740.

CONCLUSION

The Debtor's motion to reopen case and redeem is proper. Therefore it is

ORDERED that the Debtor may reopen and redeem the Toyota Camry. However, the redemption must be at the value the Debtor placed on the Toyota as of the date the petition was filed, April 28, 2003, which was \$6,490.00 (six thousand four hundred and ninety dollars). The Debtor may not attempt to redeem at the value the Debtor attributed to the Toyota in October 2003 of \$5000.00 (five thousand dollars).

DONE AND ORDERED at Fort Lauderdale in the Southern District of Florida on this 11th day of January, 2005.

RAYMOND RAY
United States Bankruptcy Judge